FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION NO.1243 OF 2006
IN
CRIMINAL APPEAL NO.633 OF 2005.

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home on his bicycle, he saw that the original accused Sanghapal, Satish and Ajay who came over to him and accosted him. In the meantime, the other accused persons separated him and permitted him to return home. On this, complainant Sandeep narrated the incident to his father. Therefore, his family along with his brother Amardeep i.e. deceased went to the spot to collect the bicycle. As it was not noticed, they went towards the square and on their reaching there all the accused persons rushed towards them armed with sword, knife, iron pipes sticks etc. and started to assault them. In the incident the brother of the complainant got killed.

3. The learned trial court found that the prosecution has proved its case in part against certain accused persons and accordingly convicted them. In so far as the applicant/appellant is concerned, he has been convicted for having committed offence under Section 149 r/w 302 of I.P.Code.

4. The learned counsel appearing for the applicant/appellant submitted that in view of the fact that only four persons are held guilty of having committed offence under section 302 of I.P.Code, the said conviction cannot be sustained with the aid of Section 149 of I.P.Code. Secondly, the role attributed to the applicant/appellant is such, it cannot be said that the act was conducted in furtherance of his common object which he shared with the other co-accused.

5. In the present case some of the accused persons were juvenile, whose case has been separated.

6. It is, therefore, submitted that taking into consideration that the applicant/appellant was on bail during the trial, his case can be considered for suspension of sentence.

7. The learned Additional Public Prosecutor

submits that in view of the findings of the trial court that the applicant/appellant is guilty of having committed offence under Section 302 r/w 149 of I.P.Code, presence and participation of the appellant/accused has been made out, therefore, the question of releasing him on bail by suspending his sentence does not arise, as the learned trial court has considered the evidence on record and on placing reliance on the testimonies of eye witnesses has rightly convicted the appellant/ accused.

8. We have gone through the judgment. Prima facie the contention of the learned counsel for the applicant/appellant that no case is made out under Section 302 r/w 149 of I.P.Code cannot be accepted at this stage. The presence and participation of the applicant/appellant is made out in the oral testimonies of the eye witnesses i.e. the complainant, Dhanraj – father of the deceased and one Bhaurao wherein a specific role has been assigned to the applicant/appellant, who is brother of co-accused, who

has assaulted the deceased with a sword while the applicant/appellant caught hold of the deceased. Therefore, in the facts and circumstances, we do not find that it is the fit case wherein the sentence can be suspended and applicant can be released on bail.

As such application is rejected.

JUDGE JUDGE

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